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SEP 23 2005

Docket No. 2328-050

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appeal of : Confirmation No. 5541  
Jian J. CHEN et al. : Group Art Unit: 1763  
Serial No. 09/821,027 : Examiner: Anna M. Crowell  
Filed: March 30, 2001 :  
For: INDUCTIVE PLASMA PROCESSOR HAVING COIL WITH PLURAL WINDINGS  
AND METHOD OF CONTROLLING PLASMA DENSITY

APPELLANTS' REQUEST FOR CLARIFICATION

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

September 23, 2005

Sir:

Appellants submit this Request for Clarification of the August 12, 2005, decision by the Board of Appeals. The clarification is necessary because of apparent inconsistencies in the decision of the Board.

The Board did not affirm the rejection of independent claims 32-34 or dependent claims 12, 35, 37 or 39. The Board did not agree with the Examiner's rationale in rejecting these claims and did not affirm the rejection of the claims. However, the Board affirmed (1) the rejections of claims 13-15 and 17 that depend on claim 12, and (2) the rejections of claims 36, 38 and 40 that depend on various combinations of non-affirmed claims 32-34, 35, 37 and 39.

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Based on the foregoing, Appellants do not understand the status of claims 12, 32-34, 35, 37 or 39. The affirmance of claims 13-15, 17, 36, 38 and 40 seems to be inconsistent with the non-affirmance of claims 12, 32-34, 35, 37 and 39.

If the Board intended to reject claims 12, 32-34, 36, 35, 37, and 39 on a new ground of rejection, it seems to Appellants that the Board should have made such a rejection. It has the power to do so under 37 CFR §1.196(b). Failure of the Board to make a rejection with the power it has as a result of 37 CFR §1.196(b) puts both the Appellants and the Examiner in an uncertain position. The Board needs to supply both the Examiner and Appellants with the rationale for its position with regard to claims 12, 32-34, 35, 37 and 39, if it believes that these claims are not patentable. The Examiner needs to know the rationale of the Board so that she can understand how to deal with responses made by Appellants. Appellants need to know the rationale of the Board so they can present to the Examiner a showing of facts not previously of record and/or amendments, or request a rehearing by the Board, or present suitable arguments to the Court in an appellant proceeding.

Based on the above, the Board is requested to clarify its position with regard to claims 12, 13-15, 17, 32-34 and 35-40. If the Board believes all of these claims are unpatentable, it should so state and provide the rationale for its thinking. If the Board is of


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the opinion that claims 12, 32-34, 35, 37 and 39 are patentable, the affirmance of the rejections of claims 13-15, 17, 36, 38 and 40 is incorrect.

Respectfully submitted,

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